

**SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT  
PERSONNEL COMMISSION  
SPECIAL MEETING MINUTES**

**February 10, 2011**

A meeting of the Personnel Commission was held in the Personnel Commission Office. Present were Ms. Rhonda Early, Vice-Chairperson; Mr. Barabani, Chairperson; Mike Salazar, Member.

**I. CALL TO ORDER**

Ms. Early called the meeting to order at 5:48 P.M. Mr. Barabani led the pledge of allegiance.

**II. APPROVAL OF AGENDA**

Mr. Barabani: Next item is item number two approval of the agenda.

Ms. Early: I move to approve tonight's agenda.

Mr. Barabani: Second? I will second it. Vote.

Ms. Early: Aye.

Mr. Salazar: Aye.

Mr. Barabani: Aye.

**III. PUBLIC COMMENTS**

Mr. Barabani: This is the public comments section. There is a microphone up here and if you can stand up and please identify your name, were missing those items in the past.

Liz Madera, Classified Employee: For the first item when you are talking about I guess reducing the qualification for GED or the High School diploma. You know I was mentioning this to some of my staff, I do work with special education and one of the things that they mention many of our special ed students do not get a diploma or GED some do obviously but, some do get the certificate of completion. We have work cruces where they go out to, you know they come and they clean they get job skills and experience, and I am sure for a lot of this are working in the cafeteria so this will be a lovely way for them to be known to get job skills and a job, this will be an opportunity for many of them in the neighborhood school. They might have lack of transportation; it is a step on road of self sufficiency and success story for the district to employ our own. I think with certain classifications I say why not, it makes sense, so, I just wanted to share my opinion on that. Thanks

Cindy Andrade, Classified Employee: My name is Cindy Andrade, I work as a Cater, I also agree with last president spoke that I was hired in 1989 when you only needed eight

grade educations to work for nutritional services. I know that as an SKO I had a twelve grade diploma, but for my job I think you do needed the 12<sup>th</sup> grade diploma because of what is involved in what I do. But, for cafeteria employee I think that you do not need a 12<sup>th</sup> grade education because you are washing dishes, you are doing labor that I do not think qualifies for it, so I do agree that in some cases that would be great and also that when way back then when I was hired we had a lot of employees and most of them were filled and I think it would help get everything filled up for the job so. Thank you.

Charlie LaChance, CSEA Labor Representative: Somebody else was going to speak? I was looking through the minutes or I am sorry, the agenda, and I do not see it so I may be speaking on the agenda item, if I am not you can stop me. But, I just wanted to make sure that everyone's understanding, if the board pleasure is to complete action items for including D, E, F, G, that any current list of potential employees can be certified by the commissioners so that this hundred, I believe there was 268, I can't remember how many they were recruited and tested, this can be certified so that we can continue to move forward to hire classified employees and maintenance and operation, particularly in very alarming information that I received this afternoon and verified from one of our assistance superintendent's that the substitutes hired by the district food service and maintenance and operation have received a \$2.00 an hour increase in pay. Understand that our classified employees sitting here as we speak are either 5 furlough days for the year or 9 furlough days for the year of police department, they have taken reductions in hours reductions in months and you are giving two dollar an hour increase to subs. It is demoralizing to our employees, and of course the explanation or reasoning behind this is that because we could not hire anyone so, I would and they are in the way to keep subs to increase pay. Mind you and they are not employees of the district, they have no benefits, they do not get vacation days, and they do not have any of those things. But, they are making more money then some of our own employees. So I would ask that we be able to make sure I know that we discuss before and of course CSEA position that commissioners can certify the list so I would hope that if this other items are appalled tonight and we pass those that you would certify those last groups of folks that were hired so that we can give that list of the district and they can continue to move forward with the interviews and get some folks hired so that they may stop contracting out and they stop this very demoralizing practice of giving subs \$2.00 more an hour. Thank you.

Gladys Byrd, Acting Director for Classified Human Resources: It appears my name is on Action Item C I believe it is not a matter of a protest it is a matter of that I tested for the position in June, and as of today I have not received test results and, nor have I received the requested information regarding what each one of the panel members gave me still today in February 2011 requesting that information.

Charlie LaChance, CSEA Labor Representative: This is a matter of order, if someone wants to speak on a particular action item do they do that now or at the time that you bring up that action item?

Mr. Barabani: Now.

Charlie LaChance, CSEA Labor Representative: Now, o.k.

Mr. Underwood, Retired Classified Management: I was interested in Item G.

Mr. Barabani: Please state your name.

Mr. Underwood, Retired Classified Management: Gary Underwood, Item G paragraph 1 which states that commission Chair Barabani be appointed to provide day to day supervision of all commission staff to include authorizing all work activities, approving time off and any overtime, and as the sole resources to resolve any questions or conflicts that may arise between staff and other persons. I am just curious why are we going to appoint you Mr. Barabani? Why is it that you are going to be appointed to be the supervisor, are they expecting to be reconvened? Does the district suppose to pay you for your work or explain that, it is aud? In the last time I was here you were going to do the investigations on behalf of the commission, now you will be doing the day to day supervision, what does that mean?

Mr. Barabani: I am not going to be compensated for that other than what I get.

Mr. Underwood, Retired Classified Management: You said you are going to be compensated?

Mr. Barabani: I am not. If that is your concern?

Mr. Underwood, Retired Classified Management: That was one of the questions. Does the Ed Code allow for you to do that provide day to day supervision? Does that mean you don't know nor does it make any difference or does it make a difference? I can't read your body language.

Mr. Barabani: Well, this is the public comment section and I am trying to refrain from speaking on this.

Mr. Underwood, Retired Classified Management: O.K. Thank you for not responding on that I guess.

Gladys Byrd, Acting Director for Classified Human Resources: Excuse me commissioners, can you please tell me when I should expect to get my test results? Thank you.

Mr. Barabani: Any more public comments? We will move on to the action items.

#### **IV. ACTION ITEMS**

Mr. Barabani: *Section IV. Action Items the first one is A. It is moved that the commission remove the requirement for a "high school graduation or equivalent" as a minimum requirement for the position of Cafeteria Worker (Job Code 0427) as not reasonably relating to the job as required by Education Code section 45276, and invite anyone*

*disqualified for not meeting this requirement be tested as soon as practical and to combine scores of those persons with the final rank order of the applicants who were allowed to test because they meet such a requirement.*

Ms. Early: I second.

Mr. Barabani: Any comments from the board? Call for a vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

Mr. Barabani: Motion passes.

Mr. Barabani: *Action item B it is moved that the commission retain sole authority to approve eligibility list pursuant to Rule 5.01B until further notice and that the commission will not recognize as valid any list approved by any person other than the commission. Motion?*

Ms. Early: I second.

Mr. Barabani: Any comment from the board? Call for a vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: Nay.

Mr. Barabani: Passes.

Mr. Barabani: *Action Item C. It is moved that the commission find that it has not received a valid protest for the recruitment and selection process for Personnel Commission Director and that to the extent that Ms. Byrd's submission of documents at the December 16, 2010 meeting might be considered a protest, it is rejected as a protest for not being a properly submitted protest under the Rules and for being untimely.*

Ms. Early: I second.

Mr. Barabani: Comment from the board? Call for a vote.

Ms. Early: Discussion.

Mr. Barabani: Discussion, I am sorry.

Ms. Early: Ms. Byrd has raised concerns that she has not received her test results so, can you set up a meeting with her and a representative from Codesp so that they can go over her concerns as it relates to her test results.

Mr. Barabani: I put that down as one of my notes items, get test results and I will contact them. If they are not on holiday I will contact them tomorrow, because some people are off tomorrow, if not by Monday.

Mr. Barabani: Call for a vote then.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: Nay.

Mr. Barabani: Motion approved.

Mr. Barabani: *Item D. It is moved that the commission approve the eligibility list for Personnel Commission Director (0115) as of December 16, 2010 because 1. December 13, 2010 is the date that Bryan Astrachan stated that he approved the list and is the date that he submitted for distribution an agenda that he had done so without making any corrections or notice to the commission that he had not. 2. Bryan Astrachan informed Commissioner Barabani that he had approved the list. 3. Bryan Astrachan never formally informed the commission that he had not approved the list and would not do so for any reason. 4. The commission acted in good faith belief that Mr. Astrachan had approved the list on December 13, 2010 and had it known otherwise it would have approved the list itself rather than ratifying that action.*

Mr. Barabani: Discussion?

Ms. Early: I second.

Mr. Barabani: Call for a vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: Nay.

Mr. Barabani: *Item E. It is moved that the commission 1. Terminate any and all appointment of Bryan Astrachan as a staff appointed by and supervised by the commission effective December 29, 2010 based on its inherent authority granted in Rule 5.01B to use its discretion to terminate such appointments. 2. Notify Bryan Astrachan and*

*the governing board that Mr. Astrachan has no authority to give direction to any staff appointed by and paid for out of the commission budget, to access any non-public commission documents including but not limited to any test material or any eligibility lists, and that he has no authorization to have keys to the commission office or to access the commission office outside of the regular work hours, and then only as a member of the public. 3. Notify the governing board that the continued employment of Bryan Astrachan as a “substitute manager” is in violation of the Rules and Education Code because he is not on any eligibility list for any position in the district. 4. Prohibit the expenditure of any funds from the commission budget for any payment to Mr. Astrachan for services rendered or expenses incurred after December 29, 2010.*

Ms. Early: I second.

Mr. Barabani: Call for a vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: Nay.

Mr. Barabani: *Item F. It is moved that the commission find that the Assistant Superintendent Human Resources – Classified: 1. has no authority to overrule the commission’s approval of an eligibility list. 2. Is in error by claiming that an eligibility list cannot be approved when there is a protest, even a legitimate one, pending review and action by the commission. 3. Is in error by claiming that no appointment can be made or hiring can be concluded from the eligibility list for Personnel Commission Director until all protests have been acted upon. 4. Has no independent authority to appoint or authorize Bryan Astrachan to conduct any business under the subject matter jurisdiction of the commission or to have unfettered and unmonitored access to the commission files and records, especially outside of normal business hours. 5. Has no authority to over-rule actions by the commission or to ignore them when they involve the subject matter jurisdiction of the commission.*

Ms. Early: I second.

Mr. Barabani: Call for the vote.

Mr. Barabani: Aye.

Ms. Early: Aye.

Ms. Early: We have not received the third vote.

Mr. Salazar: I didn’t vote?

Ms. Early: Did you want to abstain?

Mr. Salazar: It's an abstention.

Mr. Barabani: *Item G. It is moved that 1. Commission Chair Barabani be appointed to provide day to day supervision of all commission staff to include authorizing all work activities, approving time off and any overtime, and as the sole resource to resolve any questions or conflicts that may arise between staff and other persons. 2. Formally notify all staff appointed by the commission and paid out of the commission budget that they are to comply with requests and directions from Commission Barabani that involve the subject matter jurisdiction of the commission and in doing so are immunized from any disciplinary action if they ignore such directives from any other commissioner or the district administrators. 3. Formally notify all staff appointed by the commission and paid for out of the commission budget that no district administrator, and in particular Bryan Astrachan and Assistant Superintendent Human Resources – Classified, has any legal authority to give them any directions for any matter under the subject matter jurisdiction of the commission and that no disciplinary action will be taken against them should they disregard any directions that any such persons gives them. 4. Formally notify all staff that they must notify all commissioners by email immediately upon receiving any directions, orders, or other efforts to supervise them, including any commissioner, other than the Commission Chair. 5. Formally notify staff that only the commission will prepare any performance evaluations of their job performance and that any efforts by anyone else not authorized by the commission to do so will not be recognized by the commission and will not serve as the basis for disciplinary action.*

Mr. Barabani: Call.

Ms. Early: I second.

Mr. Barabani: Discussion?

Ms. Early: Yes, so is this a response to the commission staff stating that they are receiving conflicting instructions from many individuals?

Mr. Barabani: That is true, that's true they were receiving at this stage they do not exactly know who their boss is, and is going back to the same situation, when we did not have a commissioner which we still don't that the Chair resume.

Mr. Salazar: We have commissioners.

Mr. Barabani: I am sorry.

Mr. Salazar: We are commissioners.

Mr. Barabani: We do not have a Personnel Commission Director.

Mr. Salazar: We do.

Mr. Barabani: I stand corrected. Personnel Commissioner Director, plan on going back to the system until we clarify the situation. I want to make one correction about compensation, I state I don't get any compensation. Most of you know they pay us \$50.00 to sit on this thing and I forgot to mention that. But I did want to clarify this. That is money that the district does provide. Call for a vote then.

Mr. Salazar: I like to make a comment for the record.

Mr. Barabani: Oh sure.

Mr. Salazar: This whole point right here really troubles me, until a few minutes ago we had somebody that was doing the work of the director. And that is the person that should of being the staff should be following, they are leading their instructions, now that we don't have, I just find it interesting and concerning that Mr. Barabani is going to be supervising on a daily basis, the staff here I understand we are all up here as commissioners have regular jobs, and my concern is whether or not you can effectively or any body for that matter Mr. Barabani, it's not you personally, but whether somebody who has a full time job can commit to another full time job and, I am a little bit concern with some of the language here. I have lumped everything together here and, you know they are going to be under the direct focus orders of the commission chair and, with out any input from anybody else so essentially you will be acting as the director and as we all know because we have all seen the posting for director that is a very, very detailed job, you know the director of a district this size is a very detail job and it takes them a lot of time that is why they pay them money to do that and, so that is one of my concerns and, the other is the issue of the qualifications, I do not know what makes any of us up here uniquely qualified to do such a specialized job and again this is not a personal attack it is just a matter of taking a look at this situation and saying wow, this is a big, big job and so for the record I want to express that concern, I am really concerned about that, frankly we are over stepping our bounds at this point. Thank you.

Mr. Barabani: I do agree that this is a big, big job and I noticed that this does not change much, it is basically not much difference than before we did not have a personnel commissioner there, except for the short period of approximate 30 days, it wasn't this outcry when the other chair person did this job, did a good job at doing it. As to the day to day supervision, I trust the staff, they know their job, I trust them to do their job, they have done it in the past, I do not see any issues on that, I agree with it. It is a detailed job; I think the district should follow the law and the rules and hire the person that we chosen for the job instead of continually playing the game and we have to take steps like this. We have a valid candidate, we have a valid list, we have person ready to step in and do the job, but they decided they are above the law and they do not need to follow the law and they will not hire the person. I heard it here in this room, *'We know that person is not going to get hired, we do not like that person'*. This is not valid this are not merit , this has nothing you know, they are trying to validate the merit system and I am trying to hold it up and make sure things are done correctly.



Mr. Salazar: I am not here to debate or we do not have a valid list, so that is one part of correction, there is no valid list, there is no sign list. I have yet to see that. So the facts are stated.

Mr. Barabani: This is for the commissioner.

Mr. Salazar: Thank you.

Mr. Barabani: Call for a vote.

Mr. Salazar: Nay.

Ms. Early: Aye.

Mr. Barabani: Aye. Motion passed.

Mr. Barabani: *Item H. It is moved that the President of CSEA Chapter 183 be authorized to use the unused desk in the commission office lobby during normal office hours as he deems necessary to carry out CSEA representation that affects representation of classified employees appointed and supervised by the commission who are members of that bargaining unit, and the merit system for all of its represented members.*

Mr. Barabani: Call.

Ms. Early: I second.

Mr. Barabani: Discussion?

Ms. Early: Are we, is this an item before us because union representatives have had to spend so much time in the commission office addressing commission staff concerns because they are receiving conflicting instructions?

Mr. Barabani: That is partly the thing and the other issue is condoning that they have access right outside the public office, their contract does allow them pretty good access to the district, they got really good language, we are just reaffirming that here and this will save instead of coming down here or coming to the district all the time, always here to be able just to use the desk assigned something, it's not going to use, person has their own phone, CSEA has their own materials, they are not going to be using anything that is basically, like I said the contract which gives them right, and we are just kind of emphasizing that.

Charlie LaChance, CSEA Labor Representative: I might add the office staff always allows us to use the desk when we come in there. We rarely do, we are here to use the desk. They have been wonderful.

Mr. Salazar: I have a question; do we pay the rent here? Does the commission pay the rent here?

Mr. Barabani: I do not understand the question.

Mr. Salazar: Do we as the commission pay the rent here?

Mr. Barabani: This is district property.

Mr. Salazar: That is my concern. I think what we are doing is and I would like to table this actually to investigate this a little further because for us to be loaning us space that is really not ours, we do not pay the rent on. If we pay the rent I think we can do what ever we want, but if we do not pay the rent that is not ours.

Mr. Barabani: Well the board building does not pay the rent either the tax payers pay the rent. This is tax payer property and they made an agreement that CSEA has access.

Mr. Salazar: But, I mean do we know or is this our space to be able to loan out.

Mr. Barabani: Yes, this is the commissioner's office space.

Mr. Salazar: O.K. don't get angry, I am just asking the question, I don't know how that works here and, I am just curious whether or not we are the landlord here or are we the tenant?

Mr. Barabani: Oh no, this is our space because we are the commission and the commission has their own space.

Mr. Salazar: Fair enough for me, if you say we are the landlord then that is what it is.

Mr. Barabani: No, we are not the landlord, but I am not going to accept those words this property belongs to the tax payers. I know that is not constant, but it does belong to them. Call for a vote.

Ms. Early: I just want to be clear that, we are not setting up a sign that says CSEA we are just simply saying that when they are here dealing with commission staff they can walk over to the desk that currently is vacant to use the telephone and then they leave to go on, they are not coming over every day.

Mr. Barabani: They are not going to use the telephone, just the chair and a desk. Somewhere they can write on.

Mr. Salazar: If it's working so well why do we have to change it?

Ms. Early: So it's not a permanent thing it's when they have to be in the office. They have access to the empty desk.

Mr. Barabani: That is correct.

Charlie LaChance, CSEA Labor Representative: Just so the commission knowledge we have our own office. Simply quite often, usually Nerci just says to use the desk when we come in.

Mr. Barabani: Call for the vote, I vote yes.

Mr. Salazar: Nay.

Ms. Early: Aye. I just want to back up on that, once the person is sitting at that desk that desk is no longer available so this item will actually be null and void. We are just saying that because this desk is empty right now and they have to come over so frequently, correct? O.K. Thank you.

Mr. Barabani: Yes, this is correct.

Mr. Barabani: *Item 1. It is moved that commission 1. Appoint Commission Chair Barabani to make necessary decisions on all recruitments and selection processes for classified positions and to direct staff on those recruitments and selection processes. 2. Appoint and or employ Patrick Maher as an unpaid, volunteer professional expert consultant pursuant to Education Code sections 45286(b)(5) and 45312 as to advise the commission and the Commission Chair in ensuring that all recruitment and selection processes conducted under the auspices of the commission and the merit system meet legal and professional guidelines.*

Mr. Barabani: Call.

Mr. Underwood: In the school board, the public is allowed to comment on each action item before the school board.

Mr. Barabani: That is why we had the public comment section.

Mr. Underwood: So if we had the comment section of 8 or 9 items I should of just speak about all the items. Is that your expectations?

Mr. Barabani: Yes.

Charlie LaChance, CSEA Labor Representative: If it's a public hearing then everyone has the right to discuss in the public hearing and when it's an action item, then its spoke upon the public comments.

Ms. Early: I second.

Mr. Barabani: Any discussion? Call for a vote.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Salazar: Nay.

Mr. Barabani: *Item J. It is moved that the commission schedule a public hearing pursuant to Education Code section 45310 to determine if Bryan Astrachan has been: 1. Appointed as a limited term employee in accord with the Rules of the Commission and the provisions of the Education Code. 2. And if not, whether or not to order that no further pay warrant shall issue. 3. And to seek appropriate legal assistance in conducting the public hearing and enforcing any action of the commission.*

Ms. Early: I second.

Mr. Barabani: Discussion?

Ms. Early: Aye.

Mr. Barabani: Aye. We are now going to go into closed session.

Steve Holt, CSEA 1<sup>st</sup> Vice President: Are you going to be reporting out?

Mr. Barabani: We will reconvene if we have anything.

#### **V: CLOSED SESSION**

The commission adjourned into closed session at 6:27 p.m. for: Conference with legal counsel, Kristine E. Kwong, Musick, Peeler & Grant LLP. Existing Litigation (Section 54956.9a): San Bernardino City Unified School District Dr. Arturo Delgado v Personnel Commission of the San Bernardino City Unified School District Case No: CIVDS 916709. Pursuant to Government Code section 54957 to discuss: Public Employee Appointment Title: Personnel Commission Director.

The commission reconvened into open session at 7:21 and announced the following: there was no action taken in closed session.

#### **VI. ADJOURNMENT**

The commission adjourned the meeting at 7:21 p.m.